SUPREME COURT, U. S.

NOV 13 1968

JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1968

736

J. A. CAIN, d/b/a
CAIN'S BAR,

Petitioner,

vs.

STATE BEVERAGE DEPARTMENT
OF FLORIDA, and DIRECTOR
OF STATE BEVERAGE DEPARTMENT,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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Lake City, Florida

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In the Supreme Court of the United States

OCTOBER TERM, 1968

J. A. CAIN, d/b/a
CAIN'S BAR,

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STATE BEVERAGE DEPARTMENT
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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Petitioner, J. A. Cain, d/b/a, Cain's Bar, prays that a Writ of Certiorari issue to review the Judgment of the Supreme Court of Florida, entered in the above entitled cause on the 30th day of September, 1968, wherein the Supreme Court of Florida denied to Petitioner a Petition for Writ of Certiorari to the First District Court of Appeal of the State of Florida.

CITATIONS TO OPINIONS BELOW

The Supreme Court of Florida did not render an Opinion as such, but denied to Petitioner a Petition for a Writ of Certiorari to the First District Court of Appeal of Florida, which Court had previously, on April 30, 1968, denied Petitioner's Petition for a Writ of Certiorari to the State Beverage Department of Florida, the State of Florida Agency of original jurisdiction in this case. Petition for Rehearing before the First District Court of Appeal for Florida was denied on June 7, 1968.

The Opinion or Order of the Supreme Court of Florida of September 30, 1968, denying Petitioner's Petition for Writ of Certiorari to the District Court of Appeal, First District of Florida, is annexed hereto as an Appendix, (A-1).

The Opinion or Order of the District Court of Appeal, First District of Florida, of June 7, 1968, denying Petitioner's Petition for Rehearing is annexed hereto as an Appendix, (A-2).

The Opinion or Order of the District Court of Appeal, First District of Florida, of April 30, 1968, denying Petitioner's Petition for Writ of Certiorari to the State Beverage Department is annexed hereto as an Appendix, (A-3).

The Order of the Director of the Florida State Beverage Department entered on December 15, 1967, is annexed hereto as Appendix, (A-4).

This Petition is accompanied by the Transcript of the Record before the Supreme Court of Florida.

The symbol (Tr. ....) shall represent a reference to the above mentioned Transcript of Record, and the specific item number referred to therein.

Item 5 of the above mentioned Transcript of Record contains the Transcript of Testimony before the State Beverage Department of Florida of December 14, 1967, and the symbol (T. ....) shall hereafter represent a reference to the above mentioned testimony, and the specific page number referred to therein.

JURISDICTION

On September 30, 1968, the Supreme Court of Florida denied to Petitioner a Petition for Writ of Certiorari to the District Court of Appeal, First District of Florida, (A-1). On October 15, 1968, the Supreme Court of Florida granted to Petitioner a Stay Order and ordered the District Court of Appeal, First District, and the State Beverage Department, State of Florida, to stay proceedings until and including November 15, 1968, to enable Petitioner to seek review in the United States Supreme Court, (Tr. 9).

The jurisdiction of the Supreme Court of the United States to review the Decision of the Supreme Court of Florida by Certiorari is conferred by Title 28 U.S.C., Section 1257 (3) and it is claimed the afforded constitutional rights under Amendments V, VI and Section 1 of the XIV Amendment to the United States Constitution have been infringed upon, not afforded, and denied to the Petitioner.

QUESTIONS PRESENTED FOR REVIEW

1. Is it a denial of due process of law, as defined in the Fifth Amendment and Section 1 of the Fourteenth Amendment of the United States Constitution when it is shown that the alleged violations of the State Beverage Laws, upon which license revocation proceedings are based, were con-

ceived, brought about, induced and caused by the beverage agents of the State?

2. Does the Sixth Amendment to the United States Constitution, as it applies to the Right of Assistance of Counsel, apply in State Revocation Proceedings to penalize or revoke licensee's alcoholic beverage license?

AMENDMENTS TO UNITED STATES CONSTITUTION

Amendment V:

> No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or Naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment XIV, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT

On November 17, 1967, the Director of the Florida State Beverage Department issued a "Notice to Show Cause" to Petitioner, J. A. Cain, advising him that certain evidence had been presented to the Director which indicated sufficient cause to warrant the suspension or revocation of the Petitioner's Beverage License under the laws of Florida. The "Notice" alleged one count, to-wit: Sale of alcoholic beverage on Sunday by Petitioner, his servant, agent or employee. Pursuant to Petitioner's written demand, formal hearing was had before the Director on December 14, 1967, at Live Oak, Florida, resulting in the Order of Revocation of Petitioner's beverage license, (A-4). Petitioner was present at the above referred to hearing; testimony was received, (Item 5, T-1), but Petitioner was not represented by counsel.

During the course of the proceedings, Petitioner was asked if he had an attorney and he replied in the negative. Petitioner was informed of his right to have counsel, and stated his desire to have an attorney represent him, but that he had not had the chance to get him up to the hearing, (T-2). Discussion then ensued as to the reasons why Peti-

tioner did not have an attorney with him. The Department Investigator concluded that "there was an adequate amount of time to contact a lawyer if one was necessary", (T-2, 3). No further extension of time was granted Petitioner to obtain an attorney.

Petitioner plead not guilty, (T-4). The State Beverage Department then called its first witness, Ruth Brown, an undercover Agent in its employ, who testified that she had gone to Cain's Bar with two friends on the Sunday in question, (T-5); that she and her friends went to the back of the establishment; that Agent Brown knocked on the back door, after which "this lady", (indicated as Mrs. Cain), came to the back door and the witness told her she wanted to get a half-pint of gin, (T-6). Testimony of the witness relates that the lady then went inside and returned with a half-pint of gin; that the witness paid her and she and her friends left the premises, (T-6). The Undercover Agent concluded her testimony with the identification of the bottle of Gin allegedly purchased; the recitation of the details as to the method of payment; and the statement that she was accompanied by Beverage Agents Williams and Hicks, (T-6, 7). No cross-examination of the witness was conducted.

Agent J. L. Williams next testified on behalf of the Beverage Department, (T-8). His testimony relates that he followed Agent Brown to the vicinity of Cain's Bar, gave her instructions, then drove some distance away and waited until she returned and gave him a half-pint of gin, T-9). He did not observe the alleged sale. No cross-examination of Williams was had, and his testimony concluded the Department's case, (T-9).

The Transcript of the Administrative Proceedings, (Item 5), shows that neither Mr. or Mrs. Cain testified. Their con-

versations with the Director and his Assistants is recorded, however, and reveals that Petitioner (Licensee) is blind, knew nothing about the alleged offense and that he did not authorize sales during illegal hours, (T-9, 10).

Director Meiklejohn and his Assistant extensively reviewed Petitioner's record with the Beverage Department, (T-10, 14).

After a brief recess, the Director announced his decision to give Petitioner three months to sell his license, and otherwise explained the provisions of his forthcoming Order, (T-14-16), (A-4).

FEDERAL QUESTIONS RAISED IN LOWER COURTS

On February 7, 1968, Petitioner, through counsel, submitted his timely Petition for Writ of Certiorari,, in the District Court of Appeal, First District of Florida, to be directed to the Florida State Beverage Department, (Tr., Item 2), and paragraphs 5 and 6 of the above Petition recited that the Order of the Beverage Department was invalid inasmuch as the evidence in the proceedings upon which the Order is based reflects that the State of Florida, acting by and through its Beverage Department Agents, induced and brought about the alleged violations of law that the Order attempted to punish. Paragraph 6 further recites that Petitioner was denied and not afforded due process of law as guaranteed him under Amendment V, VI and Section 1 of the XIV Amendment of the United States Constitution.

By Judgment filed April 30, 1968, (A-3), the District Court of Appeal, First District of Florida, denied the above Petition without Opinion.

On June 20, 1968, Petitioner, through his counsel, submitted his timely Petition for a Writ of Certiorari in the Supreme Court of Florida, to be directed to the District Court of Appeal, First District of Florida, (Tr-Item 1).

Paragraph 5 of the above referred Petition recited that the Orders of the Director of the Florida State Beverage Department were invalid because the Petitioner was denied and not afforded due process of law as guaranteed him under Amendments V, VI and Section 1 of the XIV Amendment of the United States Constitution.

By Judgment entered September 30, 1968, the Supreme Court of Florida, denied the above Petition without Opinion, (A-1).

REASONS RELIED UPON FOR ALLOWANCE OF WRIT

Question 1.

> 1. Is it a denial of due process of law, as defined in the Fifth Amendment and Section 1 of the Fourteenth Amendment of the United States Constitution when it is shown that the alleged violation of the state beverage laws, upon which license revocation proceedings are based, were conceived, brought about, induced and caused by the beverage agents of the state?

Petitioner contends that the State of Florida, through its State Beverage Agents, conceived, brought about, induced and caused the violation of State law, with which Petitioner was charged by the Beverage Department of the State of Florida in its Administrative Hearing on December 14, 1967; to-wit: Sale of Alcoholic Beverage on Sunday. Petitioner further contends that as a result of and consequence of the above, due process of law was not afforded to him, and was in

fact, denied him, as provided in the V Amendment to the United States Constitution and made applicable to the States under Section 1 of the XIV Amendment, and as a consequence thereof valuable property of the Defendant was ordered revoked, to-wit: a State Alcoholic Beverage License, which is the foundation for Petitioner's livelihood. In the case of *One* 1958 *Plymouth Sedan v. Commonwealth of Pennsylvania,* 380 *US* 693, 14 *L. Ed.* 2*d* 170, 85 *S. Ct.* 1246, the Supreme Court of the United States decided that the provisions of the IV Amendment of the United States Constitution extends to the States, through the XIV Amendment, and a proceeding for the forfeiture of property used in the violation of a criminal law is quasi-criminal in character.

Mr. Justice Black, in the above referred to case, concurred by asserting that the Decision should be based upon the Fifth Amendment's protection against self-incrimination as well. It is Petitioner's contention that it logically follows that the due process clause of the Fifth Amendment would likewise be applicable in this case inasmuch as the proceedings in which Petitioners Beverage License was revoked was also, in fact, quasi-criminal in nature.

Question 2.

2. Does the Sixth Amendment to the United States Constitution, as it applies to the Right of Assistance of Counsel, apply in state revocation proceeding to penalize or revoke licensee's alcoholic beverage license?

Petitioner further contends that in the Administrative Hearing before the Director, State Beverage Department of Florida, on December 14, 1967, (Tr-5), he was denied the right to have the assistance of counsel for his defense, as prescribed in Amendment VI of the United States Constitution, as made obligatory on the States by Section 1 of the XIV Amendment

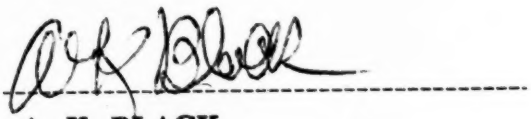
of the United States Constitution. Here, as in paragraph 1 above, Petitioner recognizes the general rule that administrative proceedings are considered equitable, not criminal in nature, but asserts that the administrative revocation of an alcoholic beverage license partakes so strongly of the punitive character that, while the action is in equity, the actual result is as if it were quasi-criminal.

In this case Petitioner was not permitted the assistance of counsel, notwithstanding his asserted desire to be represented by an attorney, (T-2). Although Petitioner did not appear at the scheduled hearing with counsel, he invoked his right to an attorney's assistance in his defense, the same being denied upon his Inquisitor's determination that nine days was an adequate amount to contact a lawyer if one was necessary, (T-3). Petitioner asserts that his appearance at the hearing without counsel cannot, and did not constitute a waiver of the right to have an attorney present; nor can this fact prejudice his subsequent invocation of the right to counsel which he asserted at the outset of the proceedings, (T-2, 3). In *Maders v. Board of Education of the City of New York*, 397 F. Supp. 356, which involved the holding of a guidance conference with pupil and parents, the result of which could be to deprive the child of his liberty or expulsion from the public schools, it was held that the School Board in conducting such a hearing could not preclude the child's parents from exercising their constitutional right under the Fourteenth Amendment to be represented by counsel. The Court noted further that the School Board's regulation that no attorney could be present at the disciplinary hearing operated to deprive the statutorily required hearing of an element so essential as to render the right to a hearing nugatory. Petitioner asserts that the same principle used in forming the decision in *Maders* should also be used and be applicable to the case at bar, and the Order under review should be declared a nullity.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

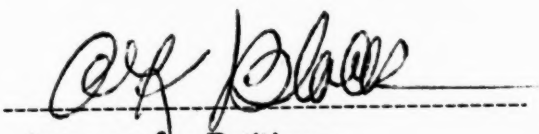
Respectfully submitted,



A. K. BLACK
P. O. Box 527
Lake City, Florida 32055
Telephone 752-5540
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that six copies hereof have been furnished Mr. Thomas F. Woods, Attorney, State Beverage Department, 547 North Monroe Street, Tallahassee, Florida, by United States Mail, on this, the 12th day of November, 1968.



Attorney for Petitioner

APPENDICES

Appendix A-1

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A. D. 1968
MONDAY, SEPTEMBER 30, 1968

J. A. CAIN,
d/b/a CAIN'S BAR,

Petitioner,

vs.

STATE BEVERAGE DEPARTMENT OF FLORIDA, ET AL.,

Respondents.

CASE NO. 37,514

DISTRICT COURT OF APPEAL, FIRST DISTRICT

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5 c (6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

A True Copy
TEST:

Sid J. White
Clerk Supreme Court.

CC: Hon. Raymond E. Rhodes
Hon. Don D. Meiklejohn
Hon. A. K. Black
Hon. W. R. Phillips

Appendix A-2

IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

JANUARY TERM, A. D. 1968

J. A. CAIN, d/b/a
CAIN'S BAR,

Petitioner,

vs. CASE NO. K-8

STATE BEVERAGE DEPARTMENT
OF FLORIDA, and DIRECTOR
OF STATE BEVERAGE DEPART-
MENT,

Respondent.

O R D E R

Petitioner's Petition for Rehearing in the above cause having been considered,

IT IS ORDERED that the Petition be and the same is hereby denied.

WITNESS the Honorable John T. Wigginton, Chief Judge, and Seal of the Court this 7th day of June, A. D. 1968.

Raymond E. Rhodes
Clerk

(SEAL)
A True Copy
ATTEST:

Raymond E. Rhodes
Clerk First District Court of Appeal
Tallahassee, Florida

Appendix A-3

IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

JANUARY TERM, A. D. 1968

J. A. CAIN, d/b/a
CAIN'S BAR,

Petitioner,

- vs -

STATE BEVERAGE DEPARTMENT
OF FLORIDA, and DIRECTOR
OF STATE BEVERAGE
DEPARTMENT,

Respondents.

NOT FINAL UNTIL TIME EXPIRES TO
FILE PETITION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. K-8

Opionion filed April 30, 1968.

A Petition for Writ of Certiorari, Original Jurisdiction.

A. K. Black, for Petitioner.

Thomas F. Woods, for Respondents.

PER CURIAM.

Certiorari denied.

WIGGINTON, Chief Judge,
CARROLL, DONALD, and RAWLS, JJ., CONCUR.

Appendix A-4

O R D E R

The matter of suspension or revocation of alcoholic beverage license #22-49, 7-COP, issued by the State of Florida and Columbia County to J. A. Cain, doing business as Cain's Bar, coming on to be heard before the Director and the Director so finding that written Notice to Show Cause why said license should not be suspended or revoked, said Notice containing written statements of the alleged cause for suspension or revocation of said license was served on J. A. Cain; that the licensee requested a hearing before the Director as provided by law; that written notice of the time, date, and place of hearing was served on the licensee, a hearing was held December 14, 1967, in Live Oak, Florida, in accordance with said Notice of Hearing and the licensee appeared and defended in the cause; and the Director so finding from the testimony and all the evidence produced at said hearing that the licensee is guilty of the charge contained in Notice to Show Cause served.

With respect to the charge, Ruth Brown, a paid informant of the State Beverage Department, in the company of J. M. Williams, State Beverage Department agent, went to the licensed premises on the Sunday alleged and purchased one half-pint of Seagram's Extra Dry Gin for $1.75, said purchase being made at approximately 2:30 P.M. that Sunday afternoon. Ruth Brown's testimony was substantiated by Agent Williams.

The Director also took judicial notice that the licensed premises has a 14-year history of similar offenses as indicated by official records of the State Beverage Department. It is therefore ORDERED AND ADJUDGED that based on said finding of guilt, alcoholic beverage license #22-49, 7-COP, issued

by the State of Florida and Columbia County to J. A. Cain, doing business as Cain's Bar, being the same, is hereby REVOKED, effective at 7:00 A.M. 9 days from the service of this order, without prejudice to the property at which said license is situated; provided, however, that said license may be transferred to applicant(s) acceptable to the State Beverage Department within 9 days, and in that event, the bona fide transfer of said license will automatically suspend the revocation.

DONE AND ORDERED this 15th day of December, 1967, at Ocala, Marion County, Florida.

Don D. Meiklejohn,

Director